

a privately-held Canadian company incorporated under the laws of Alberta. One hundred percent of the preferred shares of Worldwide Fiber are held by Leducor Industries Limited, an Alberta company and a wholly-owned subsidiary of Leducor Inc. The ten percent or greater shareholders of Leducor Inc. are David W. Lede and Clifford W. Lede, both Canadian citizens.

3. As shown in Exhibit A attached to this Order, the proposed Hibernia system will connect Boston, Massachusetts; Halifax, Nova Scotia, Canada; Dublin, Ireland; and Liverpool, United Kingdom. According to the Application, the Hibernia system will be comprised of four fiber pairs with a capacity of 160 Gbps, upgradable in 160 Gbps increments to 1.2 Tbps.⁴ The system will consist of approximately 12,222 kilometers of submerged cable in a dedicated pre-provisioned and fully protected self-restoring SDH/SONET ring. Hibernia's system design will permit 32 channels to be sent on each fiber. Each optical channel will carry 10 Gbps of information, and each cable will contain four fiber pairs, each pair equipped to operate up to 8 wavelengths of wave division multiplexing (WDM). The total capacity of a single cable will be 1,280 Gbps or 1/28 Tbps of protected traffic. With two cables required for diversity, a total capacity of 2.56 Tbps will be installed; however, protected capacity will be one-half installed capacity, or 1.28 Tbps.

III. Comments

4. We placed the Application on public notice on August 25, 1999.⁵ Tyco Submarine Systems Ltd. (Tyco) filed comments in support of the Application. No other comments were received. Pursuant to Section 1.767(b) of the Commission's rules,⁶ the Cable Landing License Act, and Executive Order No. 10530, we informed the Department of State of the Application.⁷ The Department of State, after coordinating with the National Telecommunications and Information Administration and the Department of Defense, stated that it has no objection to the issuance of the cable landing license.⁸

⁴ See Worldwide Telecom (USA) Inc. Application to Land and Operate in the United States a Private Fiber Optic Submarine Cable System, filed Aug. 4, 1999, at 4 (Application).

⁵ See *Non Streamlined International Applications Accepted for Filing*, Public Notice, Report No. TEL-00124NS (rel. Aug. 25, 1999).

⁶ 47 C.F.R. § 1.767(b).

⁷ Letter from Rebecca Arbogast, Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, U.S. Department of State (Aug. 20, 1999).

⁸ Letter from Richard C. Beard, Acting United States Coordinator, International Communications and Information Policy, U.S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission (Jan. 10, 2000).

IV. Discussion

A. Private Submarine Cable Policy

5. Worldwide Telecom proposes to operate Hibernia as a non-common carrier submarine cable system, offering bulk capacity to a specific class of eligible users, including common carriers, on an original ownership, indefeasible right of use (IRU), or lease of capacity basis.⁹ Capacity will not be offered indifferently to the public. Worldwide Telecom requests a license under the Commission's private submarine cable policy, which is intended to promote competition in the provision of international transmission facilities.¹⁰ Pursuant to this policy, the Commission has authorized non-common carrier cables where: (1) there is no legal compulsion to serve the public indifferently; and (2) there are no reasons implicit in the nature of the operations to expect that the applicant would make capacity available to the public indifferently and indiscriminately.¹¹

6. In applying the first prong of the test to submarine cable authorizations, the Commission has stated that there will be no legal compulsion to serve the public indifferently where there is no public interest reason to require facilities to be offered on a common carrier basis.¹² This public interest analysis has generally focused on whether an applicant will be able to exercise market power because of the lack of alternative facilities.¹³ Where there are sufficient alternatives, the Commission has found that the licensee will lack market power and will not be able to charge monopoly rates for cable capacity.¹⁴ The Commission has found that, in those circumstances, the public interest would be served by allowing a submarine cable to be offered on a non-common carrier basis.¹⁵

7. No one has advocated that the public interest requires Hibernia to be operated on a common carrier basis. Worldwide Telecom is affiliated with foreign carriers in Canada, Ireland, and the United Kingdom, all WTO member countries. Worldwide Telecom has stated that its foreign carrier affiliates do not possess market power in their respective markets or the ability to discriminate against unaffiliated U.S. carriers on the foreign end of their routes through the control of bottleneck facilities or services in the markets Hibernia proposes to serve.

⁹ See Application at 6.

¹⁰ See *Tel-Optik, Ltd., Memorandum Opinion and Order*, 100 F.C.C.2d 1033, 1040-42, 1046-48 (1985); see also *Cable & Wireless, plc, Cable Landing License*, 12 FCC Rcd 8516 (1997) (*Cable & Wireless*).

¹¹ See *Cable & Wireless*, 12 FCC Rcd at 8522; see also *Optel Communications, Inc., Conditional Cable Landing License*, 8 FCC Rcd 2267 (1993); *National Association of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 642 (D.C. Cir.) (*NARUC I*), cert. denied, 425 U.S. 992 (1976).

¹² See, e.g., *Cable & Wireless*, 12 FCC Rcd at 8522-23.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

8. In addition, we note that Worldwide Telecom asserts that there are sufficient existing and planned facilities on the routes to prevent it from exercising market power in offering services to the public.¹⁶ Worldwide Telecom asserts that there are a number of existing and planned common carrier and private cable systems in this region,¹⁷ including the following cables extending between the United States and Western Europe: (1) TAT-8,¹⁸ (2) TAT-9,¹⁹ (3) TAT 11,²⁰ (4) TAT-12/13²¹; (5) Atlantic Crossing-1 (AC-1);²² (6) FLAG Atlantic-1;²³ and (7) Project Oxygen.²⁴ TAT-8, TAT-9, TAT-11, TAT-12/13, and AC-1 are all operational cables that extend between the United States and various international points including the United Kingdom. The FLAG Atlantic-1 and Project Oxygen cable systems have been authorized by the Commission, but are not yet operational. The FLAG Atlantic-1 cable system will also extend between the United States, the United Kingdom and other international points, while the Project Oxygen cable system will extend between the United States and various international points including Ireland and the United Kingdom. Ireland is also served by the Private Transatlantic Cable System (PTAT-1, a Commission-authorized private cable in service since 1989).

9. Given the unopposed evidence of the availability of alternative cables and Worldwide Telecom's representation that none of its affiliates has market power in any of the cable landing countries, we find that it would not serve the public interest to impose common carrier regulation on the operations of Hibernia at this time. We note, however, that we maintain the ability to impose common carrier or common-carrier-like obligations on the operations of this or any other submarine cable system if the

¹⁶ See Application at 6.

¹⁷ See *id.* at 6.

¹⁸ See *American Telephone and Telegraph Co. et al, Application for Authorization under Section 214 of the Communications Act of 1934, as amended, to Construct and Acquire a High Capacity, Digital, Submarine Cable System*, 98 FCC 2d 440 (1984).

¹⁹ See *American Telephone and Telegraph Company et al, Joint Application for a License to Land and Operate a High Capacity Digital Submarine Cable System*, 3 FCC Rcd 7304 (1988).

²⁰ See *American Telephone and Telegraph Company et al, Application for a License to Land and Operate a High Capacity Digital Submarine Cable System*, 7 FCC Rcd 134 (1992).

²¹ See *American Telephone and Telegraph Company et al, Joint Application for a License to Land and Operate a High Capacity Digital Submarine Cable System*, 8 FCC Rcd 4808 (1993).

²² See *SSI Atlantic Crossing, LLC, Application for a License to Land and Operate in the United States a Digital Submarine Cable System*, File No. SCL-97-002, 13 FCC Rcd 5961 (1997); Order on Reconsideration, File No. SCL-97-002, 12 FCC Rcd 17435 (1997); Modification of Cable Landing License, File No. SCL-97-002(M), 13 FCC Rcd 7171 (1998) and Order and Authorization, File No. SCL-ASG-19981207-00028, DA 99-1274 (rel. June 30, 1999).

²³ See *Flag Atlantic Limited, Application for a License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System*, DA 99-2041, File No. SCL-LIC-19990301-00005 (rel. Oct. 1, 1999).

²⁴ See *Project Oxygen (USA), LLC, Application for a License to Land and Operate in the United States a Private Fiber Optic Submarine Cable System Extending between the United States and Various Overseas Points*, Cable Landing License, 14 FCC Rcd 3924, Appendix (1999).

public interest so requires.²⁵ Furthermore, we have always maintained the authority to classify facilities as common carrier facilities subject to Title II of the Communications Act if the public interest requires that the facilities be offered to the public indifferently.²⁶

10. Regarding the second prong of the test, we conclude that there is no reason to expect that capacity in the proposed cable system would be held out to the public indifferently and indiscriminately. Worldwide Telecom states that capacity will not be sold indifferently to the user public. Worldwide Telecom will make "individualized decisions in particular cases, whether and on what terms to deal."²⁷

11. We conclude that Worldwide Telecom will not offer capacity in Hibernia to the public on a common carrier basis and that the public interest does not require that it does so. Accordingly, we conclude that it is appropriate to license Hibernia on a non-common carrier basis. We also find that the Applicant will not provide a telecommunications service for a fee to such class of users as to be "effectively available directly to the public" and thus will not be a "telecommunications carrier" under the Telecommunications Act of 1996.²⁸

B. Ownership and Landing Points

12. Worldwide Telecom has provided the ownership information required by Section 1.767(a)(6) and Section 63.18 of the Commission's rules. Worldwide Telecom will own and control the cable landing station near Boston, Massachusetts, together with the portion of the Hibernia cable located in U.S. territorial waters. The foreign cable stations and the portions of the submarine cable will be owned and controlled as follows:

Canadian landing station at Halifax, Nova Scotia, and the portion of the cable located in Canadian territorial waters, owned and controlled by Worldwide Telecom (Canada) Inc.;

Irish landing station at Dublin, Ireland, and the portion of the cable located in Irish territorial waters, owned and controlled by WTI Telecom (Ireland) Limited;

United Kingdom landing station at Liverpool, United Kingdom, and the portion of the cable located in U.K. territorial waters, owned and controlled by WTO Telecom (U.K.) Limited.

The portion of the cable located within international waters will be owned and controlled by Worldwide Telecom (Barbados) Inc.

²⁵ See 47 U.S.C. § 35 (providing that a license may be granted "upon such terms as shall be necessary to assure just and reasonable rates and service in the operation and use of cables so licensed").

²⁶ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Market Entry*, IB 97-142, *Market Entry and Regulation of Foreign Affiliated Entities*, IB 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23934 ¶ 95 (1997), *recon. pending*; *Cable & Wireless*, 12 FCC Rcd at 8530 ¶ 39; *AT&T Corp. et al.*, Cable Landing License, 13 FCC Rcd 16232, 16237 ¶ 15 (Int'l Bur. 1998).

²⁷ *NARUC I* at 641.

²⁸ See 47 U.S.C. § 153(44) (defining "telecommunications carrier"); *Cable & Wireless*, 12 FCC Rcd at 8523.

13. The Application states that Hibernia will land at Boston, Massachusetts; Halifax, Nova Scotia, Canada; Dublin, Ireland; and Liverpool, United Kingdom. The Boston, Massachusetts station will be located at 83 Commercial Street, 42° 27' 34" N, 70° 57' 38" W. The Halifax, Nova Scotia station will be located at 44° 33.7593' N, 63° 33.69576' W. The Dublin, Ireland, station will be located at 53° 23' 59.1"N, 6° 13' 2.5" W. The Liverpool, U.K. station will be located at Southport Business Park, Wight Moss Way, Off Town Lane, 53° 37' 38" N, 2° 59' 23" W.²⁹

C. Environmental Impact

14. Based on the information provided by the Applicant and pursuant to the Commission's procedures implementing the National Environmental Policy Act of 1969,³⁰ we find that acting on this Application would not significantly affect the environment according to Section 1.1307(a) or (b) of the Commission's rules. Therefore, pursuant to Section 1.1306 of the Commission's rules, we conclude that grant of the requested license would not significantly affect the environment. Consequently, Worldwide Telecom is not required to submit an environmental assessment, and this Application is categorically excluded from environmental processing.

V. Conclusion

15. We grant Worldwide Telecom's Application for authority to land and operate a non-common carrier fiber optic submarine cable extending between the United States, Canada, Ireland, and the United Kingdom, subject to the conditions listed below.

VI. Ordering Clauses

16. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order 10530, we hereby GRANT AND ISSUE Worldwide Telecom (USA) Inc. a license to land and operate a non-common carrier fiber optic cable system (comprised of four fiber pairs with a capacity of 160 Gbps, upgradable in 160 Gbps increments to 1.2 Tbps, the system to consist of approximately 12,222 kilometers of submerged cable in a dedicated pre-provisioned and fully protected self-restoring SDH/SONET ring) extending between the United States, Canada, Ireland, and the United Kingdom. This grant is subject to all rules and regulations of the Commission; any treaties or conventions relating to communications to which the United States is or may hereafter become a party; any action by the Commission or the Congress of the United States rescinding, changing, modifying, or amending any rights accruing to any person hereunder; and the following conditions:

(1) The location of the cable system within the territorial waters of the United States, its territories and possessions, and upon its shore shall be in conformity with plans approved by the Secretary of the Army, and the cable shall be moved or shifted by the Licensee at its expense upon the request of the Secretary of the Army whenever he or she considers such course necessary in the public interest, for reasons of national defense, or for the maintenance or improvement of harbors for navigational purposes;

²⁹ See Application at 5 and additional landing points notification contained in File No. SCL-LPN-19990902-00017.

³⁰ 47 C.F.R. §§ 1.1301–1319.

- (2) The Licensee shall at all times comply with any requirements of U.S. government authorities regarding the location and concealment of the cable facilities, buildings, and apparatus for the purpose of protecting and safeguarding the cable from injury or destruction by enemies of the United States;
- (3) The Licensee or any persons or companies controlling it, controlled by it, or under direct or indirect common control with it do not enjoy and shall not acquire any right to handle traffic on a common carrier basis to or from the United States, its territories, or its possessions unless such service be authorized by the Commission pursuant to Section 214 of the Communications Act, as amended;
- (4) The Licensee or any persons or companies controlling it, controlled by it, or under direct or indirect common control with it shall not acquire or enjoy any right for the purpose of handling or interchanging traffic to or from the United States, its territories, or its possessions to land, connect, or operate cables or land lines, to construct or operate radio stations, or to interchange traffic, that is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensee or any persons controlling it, controlled by it, or under direct or indirect common control with it are parties;
- (5) Neither this license nor the rights granted herein shall be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of or disposed of indirectly by transfer of control of the Licensee to any persons, unless the Commission shall give prior consent in writing;
- (6) Pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. § 35; Executive Order No. 10530, as amended; and Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, the Commission reserves the right to impose additional common carrier or common-carrier-like regulation on the operations of the cable system if it finds that the public interest so requires;
- (7) The Commission reserves the right to require the Licensee to file an environmental assessment or environmental impact statement should it determine that the landing of the cable at those locations and construction of necessary cable landing stations would significantly affect the environment within the meaning of Section 1.1307 of the Commission's procedures implementing the National Environmental Policy Act of 1969; this license is subject to modification by the Commission upon its review of any environmental assessment or environmental impact statement that it may require pursuant to its rules;
- (8) The Licensee shall maintain *de jure* and *de facto* control of the U.S. segment of the cable system, including the cable landing stations in the United States, sufficient to comply with the requirements of this license;
- (9) This license is revocable by the Commission after due notice and opportunity for hearing pursuant to Section 2 of the Cable Landing License Act, 47 U.S.C. § 35, or for failure to comply with the terms of the authorizations;
- (10) The Licensee shall notify the Commission in writing of the date on which the cable is placed in service, and this license shall expire 25 years from such date, unless renewed or extended upon proper application, and, upon expiration of this license, all rights granted under it shall be terminated; and

(11) The terms and conditions upon which this license is given shall be accepted by the Licensee by filing a letter with the Secretary, Federal Communications Commission, Washington, D.C. 20554, within 30 days of the release of the cable landing license.

17. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of public notice of this order (see 47 C.F.R. § 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Rebecca Arbogast
Chief, Telecommunications Division
International Bureau

XH B'T A

Exhibit A

